

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

ADVANCED SILICON MATERIALS, LLC

Employer

and

Case 19-RC-14067

UNITED ASSOCIATION OF JOURNEYMEN
AND APPRENTICES OF THE PLUMBING AND
PIPE FITTING INDUSTRY OF THE UNITED
STATES AND CANADA, LOCAL NO. 41, AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record¹ in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All employees employed by the Employer in the maintenance/engineering department at its facility in Butte, Montana, including maintenance technicians, I/E technicians, building stewards, tool room attendants, and programmers; but excluding all office clerical employees, professional employees, managerial employees, engineering technicians, designer/drafters, records center administrators, production employees, guards and supervisors as defined by the Act, and all other employees.

¹ The parties filed briefs, which have been considered.

The Employer, located in Butte, Montana, is engaged in the production of polycrystalline silicon and silicon gas for use in the semiconductor industry. Petitioner seeks a unit of maintenance employees. The Employer contends that the appropriate unit must also include all production and maintenance employees.

The Butte plant was established in 1998.² The Employer has an older facility in Moses Lake, Washington, not involved herein. The production process consists of three major areas: silane, polyreaction, and product finishing. The plant produces purified silicon from metallurgical grade silicon, a sand-like material that is 98 percent pure silicon. In the silane unit, the material is reacted with other chemicals and then distilled into a pure gas called silane. Silane is then piped to the polyreaction unit where it is decomposed in thermal decomposition furnaces back into silicon. The silicon then goes to product finishing where it is either broken into chunks and packaged or packaged in rod form and shipped out to customers.

The Employer's facility is under the overall direction of Butte plant manager Dave Keck. Reporting to Keck are department managers, including Dan Kirkpatrick, maintenance/engineering manager; Mike Brown, silane manager; Tom McIntyre, polysilicon (which includes polyreaction and product finishing) manager; Kathy Griffith, administrative services manager; Terry Cummings, HS&EA (health and safety) manager; and Bryan Flake, human resources manager.

Reporting to maintenance/engineering manager Kirkpatrick are the tech staff, including supervisors Danninger, Goody, Cottrell, and the position recently vacated by Mark Sherrill (the "Sherrill/Rasnick position", herein). In addition, the tech staff includes the MI program specialist and the maintenance trainer. Also reporting to Kirkpatrick are Hogsdon, engineering lead, and Uptmor, engineering tech lead. The engineers, PSM coordinator, and engineering tech all report to Hogsdon.

The maintenance employees sought by Petitioner report to Danninger, Goody, Cottrell, and the Sherrill/Rasnick position. Three planners, not sought by Petitioner, also report to the Sherrill/Rasnick position. The Employer contends that the planners must be included in the unit.

Employees reporting to Uptmor include three designer/drafters, three programmers, and one record center administrator. Petitioner does not seek any of the employees who report to Uptmor; the Employer contends that all should be included in the unit.

The parties stipulated that Mark Danninger, Tom Goody, Alton Cottrell, Wade Hodgson, and Gary Uptmor are supervisors within the meaning of Section 2(11) of the Act. The parties also stipulated Mark Sherrill is a managerial employee excluded from the unit, and that Sherrill was formerly a statutory supervisor who supervised maintenance employees in polyreaction, planners, building stewards, and the tool room attendant. The employees who previously reported to Sherrill currently report to a temporary supervisor, Dennis Rasnick, a planner.³

Further, the parties stipulated that professional employees are excluded from the unit, and that chemical engineers, electrical engineers, and mechanical engineers are professional employees within Section 2(12) of the Act. The parties also stipulated that the engineering tech, who performs low level engineering work, lacks a community of interest with the unit employees

² There is no bargaining history in the plant.

³ No party contends that Rasnick is a statutory supervisor.

and should be excluded from the unit. Thus, all employees who report to Hodgson are agreed to be excluded. In addition, the parties stipulated that the mechanical integrity (MI) specialist, PSM coordinator, and maintenance trainer are excluded as managerial employees.

In summary, Petitioner seeks maintenance mechanics, I/E techs, building stewards, and tool room attendant supervised by Danninger, Goody, Cottrell, and the Sherrill/Rasnack position; and would exclude other employees in the maintenance/engineering department, including planners, who report to the Sherrill/Rasnack position; as well as programmers, designer/drafters, and the record center administrator, who report to Uptmor. The Employer contends that the planners and the employees who report to Uptmor should be included in the unit. In addition, the Employer contends that all production employees, i.e., all employees who report to Brown and McIntyre, should be included in the unit.

Maintenance employees sought by Petitioner.

Maintenance employees include maintenance technicians (“mechanics”, herein), instrument/electrical technicians (“I/E techs”, herein), building stewards (janitors), and a tool room attendant. Mechanics spend a significant amount of time performing preventative and predictive maintenance, including mechanical integrity inspections, such as measuring wall thickness and piping in vessels in the field, instrument calibrations, oil changes, rotating equipment, and visual inspections of the conditions of the facility. They inspect pipes for corrosion and erosion, and make function checks of control devices.

Sections of pipe have to be replaced from time to time. Mechanics fabricate the replacement section in the maintenance shop. If the installation requires use of a crane or elaborate rigging, mechanics perform the installation. Installations that are simply a matter of bolting in a new part are often done by operations (production) employees on the night shift. Any replacement of pipe that involves welding on the plant floor is done by a mechanic, with an operations employee standing by as safety watch. Most maintenance projects involve fabrication in the maintenance shop; they do as much as possible in the shop before moving it out into the plant.

Mechanics rotate being on call. Certain types of repairs are high priority requiring a call out; other repairs may be at the priority level requiring completion within 24 hours, and others require completion within 72 hours. Operations personnel determine the level of priority.

Some mechanics are specialized. One or two spend most of their time in the certified valve shop, testing and rebuilding pressure relief valves. One or two mechanics make up the mechanical integrity group, and spend most of their time doing inspections and performing thickness testing on piping and vessels in the plant. One mechanic does condition monitoring; he spends most of his time doing vibration analysis and using infrared thermography to take temperature readings. Another mechanic spends most of his time taking care of the HVAC equipment. Three mechanics are certified welders.

The I/E techs maintain the electrical and instrument systems in the plant, and do all of the calibration of instrumentation. They perform all control valve rebuilds, including removal and installation. About 60 percent of the overall time of the I/E techs is spent in the polyreaction area dealing with the Robicon power supplies. There are 50 Robicon power supplies in the polyreaction area.

The production process is operated by electronic controls. There are numerous electronic devices throughout the plant which the IE techs must maintain. Sometimes a modest amount of programming of the devices is required, for which the IE techs use software called Ladder Logic.

Mechanics and I/E techs work day shift, Monday through Friday. They are on separate rotating call-out lists for nights and weekends. The wages of the maintenance employees are described elsewhere below, as are their skills and experience. Mechanics have received training in rebuilding bulbous-type valves, mobile crane operation, and repair of Teikuku pumps. Such training is not offered to other employees. Mechanics and I/E techs do not ever perform any production work.

Other maintenance/engineering department employees.

The planners compose the weekly schedule of maintenance activities. Individuals in operations called production specialists⁴ meet with the maintenance supervisors and planners to decide which maintenance jobs will be done during the following week. The production specialists⁵ bring to the meetings all the work requests from operations and give the planners priority lists. Kirkpatrick testified that establishing priorities is important because there is often more work needing to be done than available resources among the maintenance employees. Based on that information, the planners develop pick lists of parts that the mechanic or I/E tech will need from stores. The planners also do a labor estimate for the job. They generate work orders, which they place on a schedule for the following week. The planners interact mainly with maintenance supervisors. They do not perform any “hands on” maintenance work. Two of the planners formerly were maintenance mechanics and one was an I/E tech. Planners are salaried nonexempt⁶ and work on the day shift, Monday through Friday. Among the current planners, two are paid \$18.23 per hour, and one is paid \$19.13.

There are three programmers. “Programmer” as used by the Employer means “process control system programmer”. Two were formerly employed as I/E techs, and one, who has network knowledge, was in information services in the administrative department. They received some additional training when they became programmers. The programmers do not develop computer software; they use software developed by someone else to set up the control room equipment so that the system will run correctly. The record is not clear whether their function in the control room is basically a maintenance/repair functions, akin to the other maintenance employees; or more a “set-up” function, akin to set-up personnel in a production context. In fact the record is unclear exactly what the programmers do all day.

Various devices in the silane and polyreaction areas of the plant send signals to the respective control rooms. The programmers configure the control system so that the various signals are displayed for the control room operators to view. The programmers handle all the logic that allows one piece of equipment to start before another, or keeps one piece of equipment from running.

Both I/E techs and programmers use Ladder Logic software, which uses standardized electrical symbols and simple yes/no, on/off choices. I/E techs work on devices out in the plant.

⁴ Stipulated by the parties to be excluded from any unit found appropriate.

⁵ A significant part of the production specialist’s job is screening work requests for duplication, rewriting work requests to clearly define the requirements, and establishing priorities.

⁶ “Nonexempt” is explained later herein.

Programmers work in the control systems cabinets. They deal with the computer cards, which are inputs and outputs for the control system. Programmers are required to use the Ladder Logic software at a somewhat higher level than do the I/E techs.

Programmers work on the day shift, Monday through Friday, and are on rotating call-out nights and weekends. They are “non-exempt” employees, and their wages are approximately \$19.50 per hour.

There are two designers and one drafter, discussed in the record as “designer/drafters”. Two of them previously worked for engineering firms; the third worked for a mining firm. They report to Gary Uptmor.

The designer/drafters use AutoCAD (computer assisted design software) to draw diagrams of all equipment, piping, and so on in the plant. They also draw designs for changes in parts of the production process, such as rerouting pipes, installing a new pump or motor, installing a pressure transmitter or temperature transmitter at a particular location. Such design work requires that they visit the actual site, accompanied by a maintenance mechanic or an I/E tech to get the benefit of that person’s expertise on how the proposed change will fit in.

The designer/drafter then creates the drawings. The drawings are reviewed by the process management of change (PMOC) committee for safety and functionality. During construction, the designer/drafter visits the location to check his drawings against the reality. After installation or construction is completed, the designer/drafter again visits the site, to verify that the drawings correctly depict the installation as built.

Designer/drafters each spend about six hours a day working at their computers.⁷ They never perform any “hands on” maintenance work. They work day shift, five days a week, are “nonexempt” employees; their wages currently range from \$14.68 to \$16.25 per hour.

The records center is a library of drawings, manuals, and other documentation of all of the equipment in the plant. Thirty to forty thousand drawings are on computer. The records center administrator maintains the library of hard copies, and scans documents into the computer. Drawings are available to maintenance employees and others on computers outside the records center, and copies of equipment manuals are kept on shelves in the hallway outside the records center. The records center administrator assists any maintenance employees or others who need help in locating a specific drawing. The administrator works the day shift, Monday through Friday, and is “non-exempt,” currently earning \$11.00 per hour. On brief, the Employer characterizes the records center administrator as a “plant clerical.”

Production employees.

Operators in silane and polyreaction operate the equipment in their respective departments. Much of that equipment is run by electronic controls. Maintenance employees make repairs and replacements as necessary, perform preventative maintenance, and rebuild equipment. Operators often make simple repairs and replacements themselves, and on larger

⁷ As testified by the supervisor of the designer/drafters, Gary Uptmor. Dan Kirkpatrick, who is the second level supervisor, testified that “the drafters are out with the maintenance techs and the operating folks all the time.” In view of their essential duties of making drawings using AutoCAD, it seems likely that they spend a substantial amount of time working at their computers.

projects, assist maintenance employees with such tasks as lifting heavy objects. Operators and maintenance employees frequently jointly troubleshoot each contributing their own expertise; i.e., the operators are familiar with the function the equipment performs, while the maintenance employees are familiar with the mechanisms.

Silane operators operate and monitor the process equipment, control the flow of raw materials, and assure that the process is running within established parameters. They rotate through the control room, where they sit at a computer console which controls every aspect of the process and monitors flows, temperature, pressure, and so on. There are six operators on each shift, with two in the control room and four out in the plant. On a typical day, there are five to seven mechanics and welders and four to six I/E techs working in the silane area. Mechanics do troubleshooting, repair and replace equipment and components, monitor the condition of the equipment, and do preventative maintenance.

Operators wear tool belts and carry respirators. Mechanics do not carry respirators or wear tool belts; they carry their tools in a bag. All silane and polyreaction operators are emergency squad members and wear red hard hats; maintenance employees wear blue hard hats, as do other non-emergency squad employees. Operators in polyreaction carry channel lock pliers, screwdrivers, open-end wrenches, flashlights, and Allen wrenches on their tool belts. Mechanics carry similar tools.

Michael Challeen, a silane supervisor, testified that silane operators spend about half their time performing “maintenance type” functions, such as taking valves apart and putting them back together; dismantling and reinstalling piping, changing filters, and repairing membrane pumps. They do not repair chemical pumps, nor do they do technical rebuilding of compressors, work which is done in the maintenance shop by maintenance employees. All welding is done by the three certified welders in maintenance. Wiring for pump replacement is done only by I/E techs. Alignment of pumps is done only by the mechanics who have been trained to do that. Challeen said that the most common collaboration between maintenance employees and operators is troubleshooting.

In the polyreaction area there are reactors, with gas racks (piping) underneath. During a shift, one operator is assigned to the downstairs (gas rack) area, one is in the control room in the Commons Building, one is in utilities,⁸ and three are on the reactor floor. The operators constantly monitor their equipment, adding oil to pumps as needed. On the gas racks, they fix leaks by removing and replacing valves. Operators change out safety valves and replace O rings on the reactors. A machine called a Varian is used to check for leaks in the gas lines. The machine creates a vacuum down the line and uses helium to check for leaks. Special training is required to use the Varian.⁹ Four polyreaction operators have the training, which was a three-day session provided by the vendor. Unspecified mechanics also have the training. About 40 percent of the use of the Varian is by operators; the remainder is by mechanics. Equipment on the reactor floor includes three 30-ton overhead cranes, which are operated only by mechanics. Tom Renouard, a polyreaction supervisor, testified that sometimes operators and mechanics work together on projects such as changing a valve or looking for a leak, for one hour up to all day, but there is no specific evidence as to how often this happens or the tasks that members of each group are performing.

⁸ “Utilities” refers to the utility building attached to the east wall of the polyreaction building. The utility building houses all of the pumps for the polyreaction area.

⁹ The Varian is a mass spectrum leak detector. Certification, which requires 200 hours of hands-on training, is required to do a Varian helium leak check.

There are several examples of “maintenance work” performed by operators. During a recent outage, operators had to remove a section of process piping in preparation for transportation to the maintenance shop for welding. Operators disconnected the pipe from the process and rigged it into slings ready to be lifted out of place by a crane that was operated by a maintenance employee. When the piping was returned from the shop, the maintenance employee again operated the crane, while operators then removed the sling and reconnected the pipe. In a situation in which the bearings on a hot air blower were overheating, operators were assigned to lubricate the bearing using a grease gun at regular intervals, a task normally performed by maintenance employees. Operators also have taken apart the process scrubber in an effort to remove plugging. Operators have disassembled process piping at the dryer and have removed numerous valves, even very large ones. Brown estimated that about 30 percent of valve changes and about 50 percent of filter changes are done by operators, while maintenance employees perform those tasks the remainder of the time.

Much of the Employer’s manufacturing process is of a highly hazardous nature. In order for repair or replacement work to be performed in hazardous areas, a permit process must be followed. If a safety watch is required, an operations employee fulfills that function while the maintenance employee is working. When the work is completed, the permit is vacated. Permits are documents which maintenance personnel obtain from operations. A permit is required for work in a confined space, welding and cutting on the plant floor, the use of any spark producing tools on the plant floor, and for "elevated work" above 10 feet from the floor. The number of permitted jobs that can be performed in any one day is limited by the fact that there are only four operators available to stand safety watch, and such jobs require two hours up to an entire shift to complete. A witness estimated that permitted jobs amount to about 50 percent of all work performed by maintenance employees on the plant floor, but not all permitted work requires an operator as a safety watch.

Both maintenance employees and operators perform visual inspections in the plant. Operators are recording temperatures and pressures of devices, while maintenance employees are independently looking for damage to piping, insulation, and pipe hangers; making certain that guards are in place on rotating equipment; and looking for oil leaks.

The silane and polyreaction units operate 24 hours a day, seven days a week. The employees in those units work rotating 12-hour shifts, from 6:00 to 6:00. The hours of employees in product refinishing are not revealed in the record. All maintenance employees normally work eight-hour shifts, five days a week. Both production and maintenance employees get a half-hour lunch period.

Applications for hire are taken by the Job Service at the Montana State Department of Employment, where a small amount of screening is done. Candidates then fill out an Employer application and are given some tests on basic math skills, cognitive reasoning, and reading and comprehension. Some of the pre-employment testing is hands-on testing of skill levels for a particular job. Candidates for maintenance jobs are given different tests than are candidates for production jobs. A candidate for a position as an operator in silane or polyreaction must have basic chemistry skills to understand the chemical flows, understanding of mathematics, and understanding of the operation of industrial equipment such as pumps, condensers, heat exchangers, reactors, and distillation columns. Operators are required to have some previous experience in manufacturing, preferably in chemical manufacturing. A candidate for a position in maintenance must have prior experience working on the types of industrial equipment or control systems in the plant. A minimum of five years prior experience, or completion of an

apprenticeship program, is required for maintenance employees. New hires generally have five to ten years' experience, many coming from the mining industry. The Employer does not have any apprenticeship program.

All jobs are posted internally, and internal candidates are preferred. Since the plant opened three years ago, two employees who were hired as silane or polyreaction operators have become maintenance mechanics, and two employees who were hired into product finishing have become building maintenance stewards. All such transfers were voluntary. There are about 37 maintenance employees, and about 23 employees in silane, about 25 in polyreaction, and about 37 in product finishing.

There are two basic pay grades for hourly employees; Grade I and Grade II, Grade II being the lower. Within each grade are automatic step increases, at three months, then six months, then every six months thereafter up to 36 months in Grade II and 42 months in Grade I. Grade I ranges from \$12.59 at entry level to \$17.72 after 42 months. Grade II ranges from \$11.13 at entry level to \$15.66 after 36 months. All maintenance mechanics are at the top level (\$17.72) of Grade I, while the building stewards and the tool room attendant are at the 30-month (\$14.91) and 36-month (\$15.66) levels, respectively, in Grade II. I/E techs are paid according to a separate scale ranging from \$13.32 at entry level to \$18.74 after 42 months. Employees in silane and polyreaction are in Grade I, at various steps; employees in product finishing are Grade II. Twenty-one silane employees and 19 polyreaction employees are at the top level in Grade I. All Grade I and Grade II employees and I/E techs receive the same benefits and have access to the same amenities in the facility.

There are also approximately 19 employees who are classified as "non-exempt." They are paid a guaranteed weekly salary and are eligible for overtime. Non-exempt employees suffer no interruption in pay if they are out sick, whereas an hourly employee who is out sick loses the first eight hours unless he or she uses vacation time. Otherwise, non-exempt employees receive the same benefits as the hourly employees. Non-exempt employees include administrative employees; laboratory technicians in the silane unit; and a number of employees in the maintenance and engineering department, i.e., designer/drafters, programmers, planners, records center administrator, and engineering technician. The non-exempt scale ranges from \$9.69 at entry level to \$21.01 at the top.

The Employer sponsors three programs, which promote employee involvement in the facility. One is the Knights Program, in which employees volunteer for training in observing the work behavior of employees in other departments. The program involves employees from production, maintenance, administration, and engineering. A second program is the Process Management of change, or PMOC. Committees including employees from engineering, production, and maintenance meet to consider proposed changes in the production process. A third program is the Workout Teams, wherein groups of employees from various departments meet to discuss cost savings opportunities.

Conclusion.

The Board has long held that a separate maintenance department unit is appropriate in the absence of a more comprehensive bargaining history, "where the facts of the case demonstrate that the maintenance employees involved have the requisite community of interest." *Ore-Ida Foods*, 313 NLRB 1016 (1994); *Franklin Mint Corp.*, 254 NLRB 714, 716 (1981); *American Cyanamid*, 131 NLRB 909 (1961). One looks at mutuality of interests in wages, hours and work

conditions, commonality of supervision, degrees of skill required; frequency of contacts; commonality of functions; frequency of interchange; and functional integration. *Ore-Ida*, at 1019. In *Ore-Ida*, the Board found a separate maintenance unit appropriate where the maintenance employees had separate supervision; held highly skilled, traditional craft positions, in which a craft apprenticeship was expected as a condition of promotion; and did not interchange with production employees. In order to move from production to maintenance, production employees had to pass an apprenticeship. This was true even though production and maintenance employees had some common tasks and the production employees "lent a hand" to the maintenance employees, since the production employees performed unskilled tasks, while only the maintenance employees performed skilled tasks. The assistance provided by production employees to maintenance employees was more in the "spirit of cooperation" or "civility" than a true overlap of job functions; the assistance was incidental to the work of the maintenance employees.

In contrast, in *Monsanto Company*, 183 NLRB 415 (1970), relied on by the Employer herein, the Board declined to find a separate unit of maintenance employees to be appropriate where the maintenance employees worked in conjunction with production employees under common supervision; maintenance and production employees performed similar functions and frequently worked together using the same procedures and tools; work functions had frequently been reassigned from maintenance classifications to production classifications and vice versa; maintenance employees were largely recruited from the production ranks; and maintenance employees could "bump back" into production in the event of layoffs. Of particular note was the fact that the majority of the proposed unit spent 80-95% of their time out on the production floor. All employees worked common shifts.

The instant case is clearly distinguishable from *Monsanto*, in that here the maintenance employees have separate immediate and second level supervision and perform a clearly different function from that of production employees. Further, maintenance employees are required to have different skills¹⁰ and experience than production employees, and maintenance employees are never assigned to perform production work.

Contrary to the Employer's assertions, I do not find the maintenance employees to be so highly integrated with the production employees as to compel a finding that the only appropriate unit is one including both production and maintenance employees. Maintenance employees and production employees never work side-by-side performing production work. Production employees *intermittently* assist maintenance employees in lifting heavy objects, troubleshooting, preparing equipment to be worked on, and standing by as a safety watch. Employer witnesses testified that the most common collaboration of maintenance and production employees is troubleshooting, and that maintenance and production employees work together primarily because of the safety aspects. This type of assistance that production employees provide to maintenance employees is similar to that found in the *Ore-Ida* case i.e., incidental to the maintenance work, and definitely not something calling for specialized craft skills. A number of maintenance employees have specialized duties, such as working on pressure relief valves, mechanical integrity testing, condition monitoring, working on HVAC equipment, and welding, and about one third of the maintenance employees are I/E techs. Most maintenance projects involve fabrication in the shop; they do as much as possible in the shop before moving it out into

¹⁰ Maintenance employees are sought for their skills regarding repair of various generic types of machinery (e.g., pumps, motors, valves) while production employees are sought for their understanding of chemical production or processing, and of equipment functions.

the plant. Thus, a substantial amount of maintenance work is done which involves no contacts or collaboration with production employees.

Production employees perform minor types of maintenance, most frequently replacing manual valves and gauges. The maintenance-type tasks that production employees perform by themselves involve only basic knowledge and relatively simple skills; production employees do not perform maintenance jobs requiring high levels of skill. When working together, the production worker hands wrenches or stands safety watch, while the maintenance workers performs the skilled operations requiring true expertise. There is a formal procedure for the assignment of jobs to mechanics and I/E techs, while production employees perform the more minor, maintenance-type tasks on an ad hoc basis. It appears that one reason for production employees performing such tasks is the lack of a sufficient number of mechanics to perform all of the tasks that might normally fall within their purview, particularly as a substantial portion of the maintenance work done by mechanics is complex and time consuming. It is clear from the record as a whole that the production process is highly complex, hazardous, and relatively fragile, requiring constant care and attention, including frequent replacement and/or rebuilding of equipment, that the time of the limited number of maintenance employees is generally reserved for those jobs which only they can perform, and that the simpler, more routine tasks are generally left up to the production employees. This does not suggest that the production employees are not skilled - they are, but in a very different arena.

While the functions of production and maintenance may be more integrated in this facility (that is, the extent to which production employees perform and/or assist in maintenance tasks) than would be found in many manufacturing facilities, as claimed by several Employer witnesses, they are not so highly integrated as to overcome the otherwise separate interests of the maintenance employees.

Maintenance employees have a *higher level* of skills and are expected to have a more extensive relevant experience at hire. Maintenance employees work basically Monday-Friday, day shifts, while production workers have rotating 12-hours shifts to cover a 7/24 operation. Most production employees are designated as "emergency responders", while maintenance employees are not. Maintenance employees receive special training not offered to production employees, and maintenance employees never perform any production work. On brief, the Employer argues that the maintenance employees sought by Petitioner are too diverse with respect to skills, prior experience, and wages to share a true community of interest. I reject such argument, inasmuch as the Board has found similar groups of maintenance employees to constitute an appropriate unit in other cases. See, for example, *Franklin Mint Corporation*, 254 NLRB 714 (1981).

In sum, I conclude that the production employees have a substantial, distinct community of interest, and that a unit including maintenance employees, but excluding production employees, is an appropriate¹¹. Moreover, no labor organization is seeking to represent an overall unit of production and maintenance employees. I note in particular a totally different hours of work; entirely separate supervision; significantly different, high level, craft skills; lack of interchange; minimal transfers between the groups and the fact that while both production and maintenance perform some unskilled maintenance operations, only mechanics perform those calling for high skills. In simplest terms the mechanics are entered separate from the production

¹¹ It is well to recall that there can be more than one appropriate unit, and the petitioner gets its choice of unit as long as it is *an* appropriate unit, even if not the "most appropriate" unit

employees -- they have totally different hours of work and supervision, unlike the *Manseto* case, where production and maintenance worked the same shifts, *together*, with common supervision.

There remains the issue of other employees in the maintenance/engineering department. The planners work the same hours and have the same immediate supervision as some mechanics, and the planners all were formerly mechanics or I/E techs. Further, there is some degree of functional integration in that planner's lay out the maintenance tasks to be carried by the mechanics and IE techs. I find that even though the planners do not perform any "hands on" maintenance work and do not have regular on-the-job contacts with rank-and-file maintenance employees, they share a community of interest with them such that they must be included in the unit. I note that the planners are supervised by one of the four clear maintenance supervisors.

The designer/drafters do not perform any traditional maintenance function, nor does the records center administrator. The designer/drafters spend most of their time at computers making drawings. They have a different background and skills from any of the maintenance employees; indeed, they may be technical employees¹² inasmuch as proficient use of AutoCAD requires specialized training.¹³ Likewise, the record center administrator does not perform any maintenance work, has different skills, and performs all her work in a library-like room handling documents. They lack any "ties" to the maintenance employees in that they are not former maintenance employees, they have different skills, and they perform dissimilar work. I conclude that the designer/drafters and the records center administrator lack a community of interest with the maintenance employees and are excluded from the unit.

Programmers are somewhat related to I/E techs. They use the same software program as the I/E techs, but at a more advanced skill level. On the other hand, programmers work only in the control rooms, seemingly a production area, performing a function seemingly closely related to production. Their wages and hours of work are similar to those of the maintenance employees sought by Petitioner, and different from the production workers. Two or the three programmers are former I/E techs. Their supervisors report to the same supervisor, Kilpatrick, as do the four clearly maintenance employees. But their supervisor's other supervisees are designer/drafters and records center administrator, whom I found to be excluded from the Unit.¹⁴ The record in the end is unclear about the function of the programmers. Are they "fixers", thus akin to the maintenance employee? Or are they more akin to a "setup" employee in a production context? I cannot tell from the record, so I shall permit them to vote under challenge.

There are approximately 44 employees in the unit.¹⁵

DIRECTION OF ELECTION

¹² Providing another basis to distinguish and separate them.

¹³ I take administrative notice that extensive training in the use of AutoCAD software is offered by community colleges, vocational schools, and on the Internet, as well as by the software vendor, Autodesk.

¹⁴ There is one other supervisor reporting to Kilpatrick, Hogstan. His supervisees were all excluded by stipulation as professionals, managerials or lacking a community of interest with maintenance or production.

¹⁵ Should Petitioner not wish to participate in an election in the expanded unit found appropriate herein, it may withdraw its petition without prejudice by giving notice to that effect to the Regional Director within ten (10) days from the date of this Decision and Direction of Election.

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL NO. 41, AFL-CIO.

NOTICE POSTING OBLIGATIONS

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of three working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the alphabetized full names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 19 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. The Region shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in the Regional Office, 915 Second Avenue, 29th Floor, Seattle, Washington 98174, on or before May 4, 2001. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission to (206) 220-6305. Since the list is to be made available to all parties to the election, please furnish a total of 4 copies, unless the list is submitted by facsimile, in which case only one copy need be submitted.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by May 11, 2001.

DATED this 27th day of April, 2001.

Paul Eggert, Regional Director
National Labor Relations Board, Region 19
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915 Second Avenue
Seattle, Washington 98174

440-1760-1000